



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2012-0219; FRL-9914-15]

Notice of Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), publishes a Notice of Intent to Suspend (NOITS) certain pesticide registrations issued by EPA. The NOITS was issued following the Agency's issuance of a Data Call-In Notice (DCI), which required the registrant of the affected pesticide products containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrant's failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registrations under FIFRA.

DATES: The NOITS included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed NOITS or, if the mailed NOITS is returned to the EPA Administrator as undeliverable, if delivery is refused, or if the EPA Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so, the NOITS becomes effective 30 days after the date of publication of this notice in the **Federal Register**, unless, during that time, a timely and adequate request for

a hearing is made by a person adversely affected by the NOITS, or the registrant has satisfied the EPA Administrator that the registrant has complied fully with the requirements that served as a basis for the NOITS.¹ Unit IV. explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the NOITS).

FOR FURTHER INFORMATION CONTACT: Khue Nguyen, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-0248; email address: *nguyen.khue@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

¹The NOITS was received by Repar Corporation on or before May 19, 2014, as evidenced by a USPS Return Receipt Card. Based on that receipt date, the 30-day deadline for Repar making a timely hearing request was June 18, 2014. The deadline passed without Repar filing a hearing request in response to the NOITS. As a result, Repar's affected product registrations were suspended by operation of law.

B. How Can I Get Copies of this Document and Other Related Information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2012-0219, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

II. Registrant Issued Notice of Intent to Suspend, Active Ingredient, Products Affected, and Date Issued

The registrant and products subject to this NOITS are listed in Table 1. A NOITS was sent to each registrant of the affected products via the U.S. Postal Service (USPS), first class mail, return receipt requested. The NOITS was received by Repar Corporation on or before May 19, 2014, as evidenced by a USPS Return Receipt Card. Based on that receipt date, the 30-day deadline for Repar making a timely hearing request was June 18, 2014. The June 18, 2014 deadline passed without Repar filing a hearing request in response to the NOITS. As a result, Repar's affected product registrations were suspended by operation of law.

Table 1. -- List of Registrants and Products Subject to Suspension

Registrant Affected	Active Ingredient	EPA Registration	Product Name	Date EPA Issued Notice
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		Number		of Intent to Suspend
Repar Corporation	Pendimethalin	69361-29	Pendimethalin Weed and Feed	5/9/14
Repar Corporation	Pendimethalin	69361-30	Pendimethalin Technical	5/9/14
Repar Corporation	Pendimethalin	69361-31	Pendimethalin 3.3 EC Herbicide	5/9/14
Repar Corporation	Pendimethalin	69361-32	Pendimethalin H ₂ O Herbicide	5/9/14

III. Basis for Issuance of Notice of Intent to Suspend; Requirement List

The registrant failed to submit the data or information required by the Data-Call In Notice, or to take other appropriate steps to secure the required data for their pesticide products listed in Table 2 of this unit.

Table 2. -- List of Requirements

EPA Registration Numbers	Guideline Numbers As Listed in Applicable DCI	Requirement Name	Date EPA Issued DCI	Date Registrant Received DCI	Final Data Due Date	Reason for Notice of Intent to Suspend
69361-29, 69361-30, 69361-31, and 69361-32	835.4100	Aerobic soil metabolism	5/31/13	5/31/13	5/31/15	1
	835.6100	Terrestrial field dissipation				
	835.6200	Aquatic field dissipation				
	850.1350	Mysid chronic toxicity				
	850.1400	Fish early-life stage toxicity				
	850.2100	Avian acute oral toxicity				
	850.4100	Terrestrial plant toxicity (seedling emergence)				

	850.4150	Terrestrial plant toxicity (vegetative vigor)				
	Non-guideline	Whole sediment: chronic invertebrates (freshwater and marine)				

¹ Inadequate 90-day response received.

IV. How to Avoid Suspension under this Notice?²

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the NOITS by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of FIFRA section 6(d) and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any

²See footnote 1.

hearing must be held and a determination issued within 75 days after receipt of a hearing limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30-day deadline as measured from your receipt of the NOITS by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit

is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected products will be final and effective at the close of business on the applicable 30-day deadline as measured from your receipt of the NOITS by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this NOITS: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the EPA Administrator, the EPA Deputy Administrator, and the members of the staff in the immediate offices of the EPA Administrator and EPA Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30-day deadline period as measured from your receipt of the NOITS by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken

appropriate steps to comply with the FIFRA section 3(c)(2)(B) DCI notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2.--List of Requirements in Unit II., for each product by submitting all required supporting data/information described in Table 2 of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail): Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your products. The suspension of the registrations of your company's products pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products that Become Suspended

Your products will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of products listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or

receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Persons other than the registrant subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registrations for your products, listed in Table 1 of Unit II., are currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) DCI notice or Section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) DCI notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is contained in FIFRA sections 3(c)(2)(B) and 6(f)(2), 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 6, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

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